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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,970	10/31/2003	R. Rox Anderson	CDL-026C3	8805

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EXAMINER	
WOO, JULIAN W	
ART UNIT	**PAPER NUMBER**
3731	

DATE MAILED: 03/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/698,970	ANDERSON ET AL.	
	Examiner	Art Unit	
	Julian W. Woo	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *16-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *16-45* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 16-19 and 23-26 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims1, 2, and 6 of U.S. Patent No. 6,120,497. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim a method for treating a wrinkle in human skin, where the method includes, inter alia, generating a beam of radiation having a wavelength between 1.3 and 1.8 microns, a fluence between 10 and 150 joules per square centimeter, and a power density of between 5 and 100 watts per square centimeter; directing the beam of radiation to a targeted dermal region between 100 microns and 1.2 millimeters below a wrinkle in the skin, cooling an epidermal region of

the skin above the targeted dermal region, and causing thermal injury within the targeted dermal region to elicit a healing response.

3. Claims 20, 22, 28, and 30-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, and 6 of U.S. Patent No. 6,120,497 in view of Eckhouse et al. (5,964,749). U.S. Patent No. 6,120,497 discloses the invention substantially as claimed, but does not claim the method that includes partially denaturing collagen in the targeted dermal region. Eckhouse et al. teach, at least in col. 3, lines 22-40, that skin irradiation results in shrinkage of collagen molecules and increases elasticity of skin and collagen, i.e., denaturing of collagen. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the method claimed in U.S. Patent No. 6,120,497, so that collagen is denatured in the targeted dermal region. Such a method would help to smooth wrinkles.

4. Claims 21, 27, 29, 36, and 37 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,120,497 in view of O'Donnell, Jr. (6,106,514). U.S. Patent No. 6,120,497 discloses the invention substantially as claimed, but does not claim the method that includes accelerating collagen synthesis in the or activating fibroblasts which increases amounts of extracellular matrix constituents in the targeted dermal region. O'Donnell, Jr. teaches, at least in col. 6, lines 46-60, post-operative, topical treatment of irradiated skin in order to promote new collagen formation and minimize inflammation, i.e., activating fibroblasts which increases amounts of extracellular matrix constituents (e.g.,

collagen) in the targeted dermal region Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the method claimed in U.S. Patent No. 6,120,497, so that activating fibroblasts increases amounts of extracellular matrix constituents in the targeted dermal region. Such a method would promote desired effects on the treated skin.

5. Claim 23 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 5,810,801. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim a method of skin rejuvenation, where the method includes, inter alia, generating a beam of radiation having a wavelength of between 1.3 and 1.8 microns, directing the beam to a targeted dermal region, cooling an epidermal region above the target dermal region, and causing sufficient thermal injury to the targeted dermal region.

6. Claims 38-40 and 43 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,659,999. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim a method of treating human skin, where the method includes, inter alia, generating a beam of radiation having a wavelength with a tissue absorption coefficient in the range of between 1 and 20 cm^{-1}, directing the beam to a targeted dermal region, cooling an epidermal region of the skin above the targeted dermal region, and causing sufficient thermal injury to the targeted dermal region.

7. Claims 41 and 42 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,659,999 in view of Eckhouse et al. (5,964,749). U.S. Patent No. 6,659,999 discloses the inventions substantially as claimed, but does not claim the method that includes partially denaturing collagen in the targeted dermal region. Eckhouse et al. teach, at least in col. 3, lines 22-40, that skin irradiation results in shrinkage of collagen molecules and increases elasticity of skin and collagen, i.e., denaturing of collagen. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the method claimed in U.S. Patent No. 6,659,999, so that collagen is denatured in the targeted dermal region. Such a method would help to smooth wrinkles.

8. Claims 44 and 45 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim1 of U.S. Patent No. 6,659,999 in view of O'Donnell, Jr. (6,106,514). U.S. Patent No. 6,659,999 discloses the invention substantially as claimed, but does not claim the method that includes accelerating collagen synthesis in the or activating fibroblasts which increases amounts of extracellular matrix constituents in the targeted dermal region. O'Donnell, Jr. teaches, at least in col. 6, lines 46-60, post-operative, topical treatment of irradiated skin in order to promote new collagen formation and minimize inflammation, i.e., activating fibroblasts which increases amounts of extracellular matrix constituents (e.g., collagen) in the targeted dermal region Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made, to modify the method claimed in U.S. Patent

No. 6,659,999, so that activating fibroblasts increases amounts of extracellular matrix constituents in the targeted dermal region. Such a method would promote desired effects on the treated skin.

.Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Julian W. Woo
Primary Examiner

March 17, 2006